IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 183 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHUNILAL @ CHUNIYO LAGJI CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 183 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 25th November, 2002 by which he is detained as a "bootlegger" under Prevention of Anti Social Activities Act (for short "PASA"). The petitioner is also served with the grounds of detention of the same date. As per the said grounds, two criminal cases are registered against the petitioner under the Bombay Prohibition Act. Considering the same and placing reliance on statement of witnesses, the detention order is passed. The petitioner has challenged the aforesaid detention order by way of filing this petition.

2) At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the last registered case against the petitioner is dated 29th August, 2002 and the order of detention is passed as late as on 25th November, 2002. It is submitted that practically there is a delay of about 2 months in passing the detention order from he date of last registered case. It is submitted that if really the activities of the petitioner are prejudicial to public order, it is not necessary for the detaining authority to wait for such a long time for passing the detention order. It is submitted by the learned advocate for the petitioner that delay in passing the detention order may fustrate the entire object of preventive detention. The learned advocate for the petitioner has relied upon an unreported decision of this Court delivered in Special Civil Application No.5321 of 2002. In para 4 of the judgement this Court has observed as under :

> "4. It appears that the last offence is registered against the detenu on 28-3-2002 and the order of detention has been passed on 30-4-2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgement relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points."

3) Considering the aforesaid aspect of the matter the order of detention is required to be set aside on the ground of delay in passing the detention order.

4) Accordingly, this petition is allowed. The order

of detention dated 25-11-2002 is quashed and set aside. The detenu, Chunilal @ Chuniyo Lagji Chhara is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.MAJMUDAR, J.)

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